Ummi Hafilda bte Ali & Anor v Karangkraf Sdn Bhd & Ors (No 2)

HIGH COURT (KUALA LUMPUR) — SUIT NO S2(S5)-23-38 OF 1999
KAMALANATHAN RATNAM J
31 MAY 2000

***Tort** — Defamation — Libel — Allegation of wedding reception of single woman and involvement in defaming Deputy Prime Minister — Attempt to stir hatred against plaintiffs — Deprivation of opportunity to court someone of the opposite sex — Re-publication of internet webpage, whether amounted to publication of defamatory statement — Test applied — Compensatory damages awarded — Whether exemplary damages ought to be awarded*

The plaintiffs sued the defendants for publishing an article about them in *Bacaria*. Both plaintiffs played a key role as witnesses in the corruption trial against the former Deputy Prime Minister of Malaysia. The headline on the front page of *Bacaria* stated: 'Ummi Hafilda NIKAH'. The article alleged that the first plaintiff had married one Khairuddin, which the second plaintiff maintained that the name referred to him. The article further alleged that the wedding reception had to be on a modest scale because it was not well received by the local folk because of the plaintiffs' involvement in defaming the Deputy Prime Minister. The plaintiffs claimed that the article was untrue and false and thus had defamed them. Both plaintiffs claimed a sum of RM10m as general or compensatory damages and for exemplary damages. The defendants submitted that the impugned passages in the article were picked up from the Internet news and that by reporting such news the defendants had in fact shown the falsity of such news. Further it was submitted that whilst the headline read 'Ummi Hafilda NIKAH', yet the final passage on that same front page quoted the first plaintiff's brother as denying that the first and second plaintiffs were married. Therefore it was urged to apply the balm of the brother's denial to soothe the bane of the headline.

Held:

(1) Whilst the words per se 'she is married' are not defamatory but when they are directed towards a single woman who upon the admitted knowledge of the defendants had her face on the front page of major newspapers and whose character and personality had been exposed in the newspapers as a star witness in the Anwar Ibrahim corruption trial, under such circumstances the innuendoes and inferences that an ordinary man in the street would draw from the headline and the subsequent passages would convey the meaning attributed to the words by the plaintiffs (see pp 539I–540A).

(2) The allegation that the plaintiffs had conspired to defame Dato' Seri Anwar Ibrahim was a serious allegation and an attempt to stir the hatred of the villagers against the plaintiffs. If left uncorrected, this article would tend to cause a rift between the plaintiffs, their

parents and the villagers. The allegation was an attempt to label the plaintiffs as liars and/or perjurers. It cast serious aspersions upon the conduct and character of both the plaintiffs (see p 541G–H).

(3) The passages in the article suggested that both the plaintiffs were married. This is an unfair statement to make, knowing full well that they were indeed not married. Such a statement had clearly deprived the chance of each of them being free to meet someone or to court someone of the opposite sex (see p 542F–G).

(4) The court accepted the plaintiffs' submission that the impugned publications had injured their reputation and credibility. The publication when read by a fair minded and ordinary member of the public would hold the plaintiffs in odium and contempt (see p 542G–H).

(5) The defendants' failure to produce the printed Internet webpage must be held against them. Alternatively their failure to produce the writer's or journalist's notes as the source of the articles must also be held against them. The journalist did not make any effort to ascertain the truth or otherwise from the plaintiffs themselves. In any case, even if there was a re-publication of the Internet webpage, this in itself is publication of the defamatory statement (see p 543A–C).

(6) Whilst the headline stated in black bold print 'Ummi Hafilda NIKAH', the defendants had juxtapositioned the words 'Azwan Ali jelas status adik' in white print embedded in a splash of black with ray-like edges to highlight what Azwan Ali had said. Had that juxtapositioned statement not been positioned as it had been, the court might have been persuaded to reject the first passage as having any defamatory connotation applying the bane and the balm principle. However, far from soothing the wound, the defendants had indeed exacerbated the hurt (see p 544B–C).

(7) The court was satisfied that this was a case where compensatory damages ought to be awarded against each of the defendants. Taking into consideration the fleeting appearance of both the plaintiffs in the limelight of publicity generated solely due to the Anwar Ibrahim corruption trial, the court awarded each of the plaintiffs a sum of RM25,000 against each of the defendants (see p 544D–E).

(8) The defendants were out to sensationalize the so-called marriage of the plaintiffs to sell their *Bacaria*. They must therefore pay. Therefore the court awarded each of the plaintiffs a further sum of RM25,000 against each of the defendants. However, the court found that this was not a case for exemplary damages. Whilst there was the element of gain in the form of profits by the sale of *Bacaria*, the plaintiffs had failed to show that there was such

extensive profit as to warrant an award under this head (see p 544H–I). A

[Bahasa Malaysia summary

Plaintif-plaintif telah mendakwa defendan-defendan kerana menerbitkan suatu rencana mengenai mereka dalam *Bacaria*. Kedua-dua plaintif telah memainkan peranan utama sebagai saksi-saksi dalam perbicaraan sogokan terhadap bekas Timbalan Perdana Menteri Malaysia. Tajuk berita pada muka hadapan *Bacaria* menyatakan: 'Ummi Hafilda NIKAH'. Rencana tersebut mengatakan bahawa plaintif pertama telah berkahwin dengan seorang bernama Khairuddin, yang mana plaintif kedua mempertahankan merujuk kepadanya. Rencana tersebut selanjutnya mengatakan bahawa majlis perkahwinan terpaksa diadakan secara sederhana kerana ia tidak diterima dengan baik oleh orang tempatan disebabkan penglibatan plaintif-plaintif dalam memfitnah Timbalan Perdana Menteri tersebut. Plaintif-plaintif menuntut bahawa rencana tersebut adalah tidak benar dan justeru itu telah memfitnah mereka. Kedua-dua plaintif menuntut jumlah sebanyak RM10 juta sebagai ganti rugi am atau pampasan dan untuk ganti rugi teladan. Defendan-defendan berhujah bahawa petikan-petikan yang dipersoalkan dalam rencana tersebut telah diperolehi daripada berita Internet dan bahawa dengan melaporkan berita sedemikian defendan-defendan sebenarnya telah menunjukkan kepalsuan berita sedemikian. Selanjutnya, ia dihujahkan bahawa sedangkan tajuk berita membaca 'Ummi Hafilda NIKAH', petikan akhir pada muka surat yang sama menyebut abang plaintif pertama sebagai telah menyangkal bahawa plaintif kedua dan ketiga telah berkahwin. Dengan itu, mahkamah diseru memakai 'ubat' penyangkalan abang untuk menenangkan kesan buruk daripada tajuk berita tersebut. B C D E F

Diputuskan:

(1) Sedangkan perkataan-perkataan 'she is married' sahaja tidak memfitnah, tetapi apabila ditujukan terhadap seorang wanita yang belum berkahwin dan ini telah pun diakui telah diketahui oleh defendan-defendan yang mana wajahnya disiarkan pada muka depan akhbar-akhbar utama dan yang mana sifat dan keperibadiannya telah didedahkan dalam akhbar-akhbar sebagai saksi utama dalam perbicaraan sogokan Anwar Ibrahim, maka di bawah keadaan sedemikian sindiran-sindiran dan inferens yang dibuat oleh orang biasa daripada tajuk berita dan petikan-petikan berikutnya akan menyampaikan maksud yang diberikan kepada kata-kata tersebut oleh plaintif-plaintif (lihat ms 539I–540A). G H I

(2) Tohmahan bahawa plaintif-plaintif telah bersubahat untuk memfitnah Dato' Seri Anwar Ibrahim merupakan satu tohmahan

yang serius dan satu cubaan untuk menimbulkan rasa benci penduduk kampung terhadap plaintif-plaintif. Sekiranya dibiarkan, rencana ini akan menyebabkan salah faham di antara plaintif-plaintif, ibu bapa mereka dan penduduk kampung. Tohmahan tersebut merupakan satu cubaan untuk melabel plaintif-plaintif sebagai pembohong dan/atau penyumpah bohong. Ia menebarkan umpatan yang serius ke atas kelakuan dan sifat kedua-dua plaintif (lihat ms 541G–H).

(3) Petikan dalam rencana tersebut mencadangkan bahawa kedua-dua plaintif telah berkahwin. Ini adalah pernyataan yang tidak adil, walhal sedar sepenuhnya bahawa mereka memang tidak berkahwin. Pernyataan sedemikian jelas telah melucuthakkan peluang mereka masing-masing untuk menemu orang lain (lihat ms 542F–G).

(4) Mahkamah menerima penghujahan plaintif-plaintif bahawa penerbitan yang dipersoalkan telah menyinggung reputasi dan kebolehpercayaan mereka. Penerbitan tersebut apabila dibaca oleh seorang ahli masyarakat yang bersikap adil dan biasa tentu menimbulkan perasaan kebencian ramai dan hina terhadap plaintif-plaintif (lihat ms 542G–H).

(5) Kegagalan defendan-defendan untuk mengemukakan muka surat Web yang dicetak mestilah dipertanggungjawabkan oleh mereka. Secara alternatif, kegagalan mereka untuk mengemukakan nota-nota penulis atau wartawan sebagai sumber rencana-rencana tersebut mestilah juga dipersalahkan terhadap mereka. Si wartawan tidak membuat sebarang percubaan untuk menentukan kebenaran atau sebaliknya daripada plaintif-plaintif sendiri. Dalam apa jua keadaan pun, sekiranya terdapat penerbitan semula muka surat Web Internet, ini dengan sendirinya merupakan penerbitan pernyataan yang memfitnah (lihat ms 543A–C).

(6) Sedangkan tajuk berita dalam tulisan hitam menyatakan 'Ummi Hafilda NIKAH', defendan-defendan telah meletakkan kata-kata 'Azwan Ali jelas status adik' dalam tulisan putih yang terpacak dalam rintik hitam dengan sempadan bersinar untuk menitikberatkan apa yang telah dikatakan oleh Azwan Ali. Andainya pernyataan yang diletakkan berdampingan itu tidak diletakkan sedemikian, mahkamah mungkin menolak petikan pertama sebagai mempunyai apa-apa kesan memfitnah dengan memakai prinsip 'bane and balm'. Namun demikian, jauh daripada mengubati kecederaan, defendan-defendan memang telah menggusarkan luka tersebut (lihat ms 544B–C).

(7) Mahkamah puas hati bahawa ini merupakan suatu kes di mana ganti rugi pampasan harus diawardkan terhadap setiap seorang defendan. Dengan mengambil kira kehadiran sepintas lalu kedua-dua plaintif yang mendapat pemerhatian ramai akibat perbicaraan sogokan Anwar Ibrahim, mahkamah mengawardkan setiap

seorang plaintif jumlah sebanyak RM25,000 terhadap setiap seorang defendan (lihat ms 544D–E). A

(8) Defendan-defendan berhasrat menggemparkan perkahwinan plaintif-plaintif yang dikatakan untuk melariskan jualan *Bacaria*. Dengan itu, mereka harus menerima akibatnya. Maka mahkamah mengawardkan setiap plaintif jumlah lanjut sebanyak RM25,000 terhadap setiap seorang defendan. Walau bagaimanapun, mahkamah mendapati bahawa ini bukanlah suatu kes untuk ganti rugi teladan. Sedangkan terdapat unsur manfaat dalam bentuk keuntungan daripada jualan *Bacaria*, plaintif-plaintif telah gagal menunjukkan bahawa wujudnya keuntungan yang begitu lumayan hinggakan mewajarkan suatu award di bawah kepala ini (lihat ms 544H–I).] B C

Notes

For cases on libel generally, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 263–352. D

Cases referred to

Chalmers v Payne [1835] 2 CM (refd)
Charleston & Anor v News Group Newspapers Ltd & Anor [1995] 2 WLR 450 (refd) E
Chok Foo Choo v The China Press Bhd [1999] 1 MLJ 371 (refd)
Chua Jui Meng v Hoo Kok Wing & Anor [2000] 3 MLJ 1 (refd)
Dato' Abdullah Hishan bin Haji Mohd Hashim v Sharma Kumari Shukla (No 3) [1999] 6 MLJ 589 (refd)
Morosi v Broadcasting Station 2 GB Pty Ltd [1980] 2 NSWLR 418 (refd) F
Noor Asiah bte Mahmood & Anor v Randhir Singh & Ors [2000] 2 MLJ 175 (refd)
Normala Samsudin v Keluarga Communication Sdn Bhd [1999] 2 MLJ 654 (refd)

Legislation referred to G

Islamic Family Law (Federal Territories) Act 1984 s 13

John Clark Sumugod (*Low Chee Hoong* with him) (*Sidek Teoh Wong & Dennis*) for the plaintiffs.

Haris Ibrahim (*Nurul Akmat bte Omar* with him) (*Haris & Co*) for the defendants. H

Kamalanathan Ratnam J:

Facts

The plaintiffs sued the defendants for publishing an article about them in *Bacaria* which appeared on 13 March 1999. *Bacaria* is a newspaper that is published by the first defendant, printed by the second defendant and I

distributed by the third defendant. The plaintiff is a businesswoman who runs an advertising company called Karisma Advertising Sdn Bhd. The second plaintiff is also a businessman and is a director of companies. He is also a politician and a member of UMNO. Both plaintiffs played a key role as witnesses in the corruption trial against the former Deputy Prime Minister of Malaysia which led to his conviction.

The publications in the said article which the plaintiffs found defamatory and which they are complaining of are as follows:

(1) The headline on the front page of *Bacaria* which states 'Ummi Hafilda NIKAH'.

Agreed translation:

> Ummi Hafilda MARRIED

(2) The passage which reads:

> Ummi Hafilda kembali menjadi tumpuan. Setelah beberapa minggu wajahnya tidak lagi menghiasi muka depan akhbar-akhbar utama, secara tiba-tiba tersebar berita yang mendakwa Ummi Hafilda telah bernikah dengan anak saudara kepada bekas pemimpin UMNO, Sulaiman Palestin. Ummi didakwa telah bergelar 'puan' setelah mengakhiri zaman daranya dengan lelaki pilihan yang juga kekasihnya, Khairuddin. Majlis pernikahan Ummi Hafilda juga didakwa terpaksa diadakan secara 'kecil-kecilan' kerana tidak mendapat sambutan penduduk Kampung Kebun Sireh, Bukit Mertajam.

Agreed translation:

> Ummi Hafilda is back in the limelight. After a few weeks of her image having not graced the front cover of major newspapers suddenly there was widespread news alleging that Ummi Hafilda had married the nephew of a former UMNO leader, Sulaiman Palestin. Ummi is said to now be a 'Mrs' after ending her singlehood with the man of her choice who is also her sweetheart, Khairuddin. The wedding reception allegedly had to be on a modest scale because it was not well received by the residents of Kampung Kebun Sireh, Bukit Mertajam.

(3) Another passage which reads:

> Lebih mengejutkan, berita pernikahan Ummi Hafilda-Khairuddin tidak diketahui oleh keluarga Ummi Hafilda.

Agreed translation:

> More surprisingly, the news of the marriage between Ummi-Khairuddin was not known by Ummi Hafilda's family.

(4) The fourth passage that the plaintiffs find offence is:

> Seorang kenalan rapat kepada keluarga Khairuddin memberitahu kononnya En Khairuddin dan Cik Ummi Hafilda bertunang ketika kes Datuk Seri Anwar Ibrahim sedang hangat di mahkamah.
>
> Menurut berita yang didengar, Khairuddin sudahpun mengahwini Ummi Hafilda. Majlis kenduri kahwin di rumah Khairuddin di Kampung

Kebun Sireh, dekat Bukit Mertajam dikatakan diadakan secara kecil-kecilan sahaja kerana masyarakat setempat didakwa tidak suka pada keluarganya.

Ibu bapa Khairuddin berasa serba salah dengan masyarakat setempat akibat persekongkolah Khairuddin dalam menfitnah Datuk Seri Anwar Ibrahim.

Agreed translation:

A close acquaintance to Khairuddin's family informed that it was said En Khairuddin and Cik Ummi Hafilda got engaged during the intense Datuk Seri Anwar Ibrahim case in court. From the news that was heard, Khairuddin was already married to Ummi Hafilda. The wedding reception at Khairuddin's house in Kampung Kebun Sireh, Bukit Mertajam, was held on a modest scale only because the local folk allegedly did not like the family.

Khairuddin's parents feel uncomfortable with the local society as a result of Khairuddin's involvement in defaming Datuk Seri Anwar Ibrahim.

(5) The fifth passage which the second plaintiff complains of is as follows:

Khairuddin adalah anak saudara kepada Allahyarham Sulaiman Palestin, tokoh politik yang pernah bertanding untuk kerusi presiden UMNO di mana beliau telah mencabar Presiden UMNO waktu itu Tun Hussein Onn.

Dengan menjual nama bapa saudaranya Khairuddin dapat mendekati beberapa tokoh politik. Dari sinilah beliau mendapat peluang berniaga.

Agreed translation:

Khairuddin is the nephew of the late Sulaiman Palestin, a political figure who had contested for the position of the president of UMNO whereby he challenged the incumbent president of UMNO, Tun Hussein Onn.

By selling his uncle's name, Khairuddin managed to get close to a few political figures. From here he got business opportunities.

The plaintiffs' complaint

In respect of the headline the first plaintiff complains that the words so stated are untrue and false and thus had defamed her. In respect of the second passage, the plaintiffs contend that the words stated are untrue and that they have been embarrassed by such a publication. The first plaintiff testified that the said words impute that she had eloped (kahwin lari) and did not obtain the consent or the blessings of her family towards the marriage. It also imputed that she was a person who did not follow the tradition and went against the way of life of a Malay. She also complained that the said words had caused her embarrassment, had ruined her image, reputation and good name and credibility. It had also affected her as a professional businesswoman and had also affected her credibility as

a witness in the Dato' Seri Anwar Ibrahim trial. The words also implied that because no one would have attended her wedding reception she was forced to have it in a modest scale (kecil-kecilan). The second plaintiff testified that he is the nephew of the ex-UMNO leader, Sulaiman Palestin, and that he was from Kampung Kebun Sireh, Bukit Mertajam. He also maintained that the name 'Khairuddin' referred to in the passages in actual fact referred to him and that the words had thereby defamed him. He also contended that the words uttered in the second passage as referring to him were untrue and that they had ruined his reputation. The words had also brought him into public hatred and ridicule, as supposedly the said wedding reception did not get the full response of the people of Kampung Kebun Sireh, Bukit Mertajam. He too contended that the said words uttered of him had ruined his reputation, good name and credibility as a businessman and also as a witness in the Dato' Seri Anwar Ibrahim trial which was still in progress when the article was published. He contended that the public would cast aspersions as to his honesty as a witness.

In respect of the third passage, the first plaintiff testified that the said words implied that she had not obtained the consent or the blessings of her family and/or that she had eloped to get married since her family did not know of her marriage. In respect of the fourth passage, the second plaintiff contended that the said words had further defamed him for the reasons stated earlier. It also implied that he was a liar who had conspired to defame Dato' Seri Anwar Ibrahim. In respect of the fifth passage, the second plaintiff contended that the said words had ridiculed him as a politician and as a businessman.

In addition, the first plaintiff contended that by these publications she was embarrassed to face the public and her friends. The said publication had also ruined her friendship with the second plaintiff and that the public was looking upon their friendship with a myopic view. The first plaintiff also testified that she suffered from emotional distress and, being a single woman, who had not as yet married, the said publication had ruined her chances of marrying a man of her choice. The second plaintiff claimed that by alleging that he was married to the first plaintiff the article had ruined his chances of marrying a woman of his choice.

The claim

Both the plaintiffs claim a sum of RM10m as general or compensatory damages and for exemplary damages to be assessed by the court. Both the plaintiffs are also claiming that the defendants do either jointly or severally within seven days from the date of the order of this court publish in the *Utusan Malaysia* and the *Berita Harian*, on the defendants' own costs, an apology, inter alia, showing/displaying the plaintiffs' picture, words agreed to by the plaintiffs and that the said apology ought not to be less than $^1/_4$ of the size of a page in the said newspapers. There is also a claim by the plaintiffs for a written undertaking from the defendants that they will not print or cause to be published in whatsoever mass media the plaintiffs' name without the consent of the plaintiffs. Finally there is a claim

for costs to be paid on a solicitor-client basis by the defendants to the plaintiffs. A

The defence

The defendants called two witnesses, namely, the first defendant's auditor, to verify the sales figure of the said newspapers, and the writer of the said article. From the evidence adduced at trial I am able to assess that the defendants' case is that: B

(i) the words complained of were not defamatory;

(ii) the said article as a whole throws some light to the falsity of the alleged internet news and thus could not be defamatory; C

(iii) the 'Khairuddin' referred to in the said article does not refer to the second plaintiff;

(iv) the claim for RM10m by each plaintiff is not commensurate with the sales figure of the newspaper;

(v) the defendants did not intend to defame the plaintiffs; and D

(vi) the said article was picked and reproduced from the internet.

Findings of the court

Are the words spoken defamatory of the plaintiffs? E

In so far as the first plaintiff is concerned, she says that the words boldly headlined 'Ummi Hafilda NIKAH' being false and untrue, are defamatory of her. Whilst it is clearly acceptable that the words as they are, are not defamatory, the question that arises is, is it defamatory to allege that a woman who is unmarried as being married. It is true that what the ordinary F man would infer without special knowledge is usually termed as the natural and ordinary meaning of the words. But here following the headline, the defendants have contended in the second and third impugned passages that the first plaintiff had ended her maidenhood by marrying her lover, Khairuddin, without the knowledge and consent of her family. They have also stated that the plaintiffs were forced to hold the wedding on a small G scale because their marriage was not well received by the second plaintiffs co-villagers of Kampung Kebun Sireh, Bukit Mertajam. The headline and the passages taken as a whole together with the fourth passage, no doubt would conjure up in the mind of the ordinary man the inference that there was something wrong with this marriage as to cause the villagers to stay H away from it, thus forcing the plaintiffs to hold the marriage on a small scale. The plaintiffs seek to draw the inference that it was a 'runaway marriage' as it was without the consent of their respective parents, and further, because the plaintiffs had conspired to testify against Anwar Ibrahim, the villagers had shunned the marriage.

Whilst I agree that the words per se 'she is married' are not defamatory I but when they are directed towards a single woman who upon the admitted knowledge of the defendants had her face 'on the front page of major

newspapers' and whose character and personality had been exposed in the newspapers as a star witness in the Anwar Ibrahim corruption trial, then under such circumstances the innuendoes and inferences that an ordinary man in the street would draw from the headline and the subsequent passages would convey the meaning attributed to the words by the plaintiffs. Further as rightly expressed by the Court of Appeal in *Chok Foo Choo v The China Press Bhd* [1999] 1 MLJ 371, whether the words complained of are defamatory, is a question of fact, dependent upon the circumstances of the particular case. The defendants have argued that since both the plaintiffs are Muslims, there is no question of consent of the parents being required, since if the parents refuse, in Islam, the first plaintiff can obtain the consent of her Wali or even to the extent of getting the consent from the Wali Raja, that is, the syariah judge. Section 13 of the Islamic Family Law (Federal Territories) Act 1984 reads as follow:

> Consent required
>
> A marriage shall not be recognised and shall not be registered under this Act unless both parties to the marriage have consented thereto, and either —
>
> (a) the wali of the woman has consented thereto in accordance with Hukum Syara'; or
>
> (b) the Syariah Judge having jurisdiction in the place where the woman resides or any person generally or specially authorised in that behalf by the Syariah Judge has, after due inquiry in the presence of all parties concerned, granted his consent thereto as wali Raja in accordance with Hukum Syara'; such consent may be given wherever there is no wali by nasab in accordance with Hukum Syara' available to act or if the wali cannot be found or where the wali refuses his consent without sufficient reason.

To my mind this argument is self-defeating. Even assuming there was the marriage, then the question is not that the parents had refused their consent. The parents were deprived of their right and joy and satisfaction of giving their consent, and blessings to the couple. Further, reading the fourth impugned passage, it is easy to understand the feelings of the plaintiffs. It has been subtly alleged that the plaintiffs had conspired to defame Dato' Seri Anwar Ibrahim by testifying against him at the corruption trial. This is clearly a serious allegation against the plaintiffs. It is an attempt to stir the hatred of the villagers of Kampung Kebun Sireh, Bukit Mertajam, against the plaintiffs. It also suggests that the second plaintiffs parents are upset at the conduct of their fellow villagers. If left uncorrected this article would tend to cause a rift between the plaintiffs, the second plaintiff's parents and the villagers of Kampung Kebun Sireh, Bukit Mertajam. The allegation of conspiracy in a case that has been concluded is most serious. It is an attempt to label the plaintiffs as liars and/or perjurers. It casts serious aspersions upon the conduct and character of both the plaintiffs.

As for the second plaintiff there is no denial that he is the nephew of the ex-UMNO leader, Sulaiman Palestin. I also find as a fact that he hails from Kampung Kebun Sireh, Bukit Mertajam. The claim by the defendants that since only the name Khairuddin has been mentioned in the impugned

passages that that name could not be referring to the second plaintiff, is totally unacceptable. In any case since it is a fact that the second plaintiff is the nephew of the ex-UMNO leader, Sulaiman Palestin, and also hails from Kampung Kebun Sireh, Bukit Mertajam, and was or to be a witness in the corruption trial of Anwar Ibrahim and whose name had been mentioned regularly in all the leading dailies during the corruption trial, I find as a fact that the name Khairuddin refers to none other than to the second plaintiff. The defendants had led no evidence to show that the name Khairuddin referred to anyone else in particular. In any case, DW2, the defence witness, who wrote one of the articles under the pen name of Iman Imran admitted under cross-examination that the Khairuddin referred to in the article did in fact refer to the second plaintiff. He also admitted that he didn't know if the plaintiffs were lovers, whether they were married and whether they had defamed Anwar Ibrahim. He also did not know whether the second plaintiff had sold his uncle's name to gain political leverage and to obtain business opportunities.

The impugned articles when expressly referring to the second plaintiff no doubt were defamatory of him. It shows that due to his conspiracy with the first plaintiff to testify against Anwar Ibrahim and to defame him, he and his family had lost the respect of the people of his village, namely, Kampung Kebun Sireh, Bukit Mertajam. The fifth impugned passage was clearly the worst attack on the second plaintiff. This passage used the words 'dengan menjual nama bapa saudaranya'. It conveys the inference that the second plaintiff was so devoid of any ability of his own that he had to sell the name of his illustrious uncle to get close to politicians and thereby obtain opportunities to advance his businesses. At least if the passage had suggested that the second plaintiff had used his uncle's name to advance his business opportunities, there can be nothing defamatory of such words, for it is common and acceptable for a son or daughter or nephew or niece to use an illustrious relative's name and relationship to advance one's own life. The second plaintiff has testified that he is a politician and a businessman.

In the present case, the passages suggest that both the plaintiffs are married. This is an unfair statement to make, knowing full well that they are indeed not married. Such a statement has clearly deprived the chance of each of them being free to meet someone or to court someone of the opposite sex.

I accept the plaintiffs' submission that the impugned publications had injured their reputation and credibility. I have no doubt that the said publications when read by a fair minded and ordinary member of the public would hold the plaintiffs in odium and contempt. In any event, DW2 admitted under cross-examination to the plaintiffs' solicitors' suggestion that the impugned passages clearly held the plaintiffs in low esteem in the eyes of the general public.

The defence

The only credible defence raised was that the defendants had picked up the impugned passages from the internet news and that by reporting such news

A the defendants had in fact shown the falsity of such news. Firstly, the defendants' failure to produce the crucial evidence to support such a defence, namely, their failure to produce the printed internet webpage, must be held against them. Alternatively, their failure to produce the writer's or journalist's notes as the source of the articles must also be held against them. Whilst the journalist found time to speak to the brother of the B first plaintiff, he did not make any effort to ascertain the truth or otherwise, from the plaintiffs themselves. Under cross-examination, the reason for this failure became evident. PW2 was given a deadline by his editor; so he had to rush the news without verifying its truth. In any case, even if there was a re-publication of the internet webpage this in itself is publication of the C defamatory statement (see *Chua Jui Meng v Hoo Kok Wing & Anor* [2000] 3 MLJ 1).

'The Bane and the Balm' treatment

D The defendants relied heavily upon the decision of the House of Lords in *Charleston & Anor v News Group Newspapers Ltd & Anor* [1995] 2 WLR 450 (HL) which quoted with approval a passage from the judgment of Alderson B in *Chalmers v Payne* [1835] 2 CM and R 156, 159 wherein his Lordship said at p 454:

> E ... In one part of this publication, something disreputable to the plaintiff is stated, but that is removed by the conclusion; the bane and antidote must be taken together.

However, Lord Bridge of Harwich went on to say at p 456 of the judgment as follows:

> F Whether the text of a newspaper article will, in any particular case, be sufficient to neutralise the defamatory implication of a prominent headline will sometimes be a nicely balanced question for the jury to decide and will depend not only on the nature of the libel which the headline conveys and the language of the text which is relied on to neutralise it but also on the manner in which the whole of the relevant material is set out and presented. But the G proposition that the prominent headline, or as here the headlines plus photographs, may found a claim in libel in isolation from its related text, because some readers only read headlines, is to my mind quite unacceptable ...

In the case before me, the defendants argued that whilst the headline H screamed 'Ummi Hafilda NIKAH' yet the final passage on that same front page quoted the first plaintiff's brother as denying that the first and second plaintiffs were married. Therefore upon the authority of *Charleston*, En Haris for the defendants in his usually persuasive tenor urged me to apply the balm of the brother's denial to soothe the bane of the screaming headline. Before I consider this submission I must refer to a decision of the I Australia Court of Appeal in *Morosi v Broadcasting Station 2 GB Pty Ltd* [1980] 2 NSWLR 418 where their Lordships were also urged to apply the 'bane and antidote' principle. Samuels JA said at p 419:

> ... But in a case such as this the material already contains a defamatory imputation: and the inquiry is whether that effect is overcome by contextual matter of an emollient kind so as to eradicate the hurt and render the whole publication harmless.

The answer therefore rests in weighing up and comparing the bane and the balm. Each case has to be looked at on its own factual matrix. In the case before me, whilst the headline stated in black bold print 'Ummi Hafilda NIKAH', the defendants had also juxtapositioned the words 'Azwan Ali jelas status adik' in white print embedded in a splash of black with ray-like edges to highlight what Azwan Ali had said, exactly before the words 'Ummi Hafilda NIKAH'. In other words the impression conveyed is 'Azwan Ali clarifies his sister's status' 'Ummi Hafilda MARRIED'. Had that juxtapositioned statement not been positioned as it had been I might have been persuaded to reject the first passage as having any defamatory connotation applying the bane and the balm principle. However, in this case far from soothing the wound the defendants had indeed exacerbated the hurt. I would say that far from being the balm of the bane the defendants had reopened the wound.

Damages

I am satisfied that this is a case where compensatory damages ought to be awarded against each of the defendants. Taking into consideration the fleeting appearance of both the plaintiffs in the limelight of publicity generated solely due to the Anwar Ibrahim corruption trial, I award each of the plaintiffs a sum of RM25,000 against each of the defendants. I have exhaustively dealt with the law relating to each of the categories of damages in my earlier judgments (see *Normala Samsudin v Keluarga Communication Sdn Bhd* [1999] 2 MLJ 654; *Dato' Abdullah Hishan bin Haji Mohd Hashim v Sharma Kumari Shukla (No 3)* [1999] 6 MLJ 589; *Noor Asiah bte Mahmood & Anor v Randhir Singh & Ors* [2000] 2 MLJ 175).

> As for aggravated damages it is clear that to date there has been no apology. Besides, the defendants ought to have known that the article, admittedly taken from the 'Reformasi' website in the internet which no doubt is a website in support of Anwar Ibrahim, would have given a jaundiced view of the plaintiffs, since they both were involved in the corruption case against Anwar Ibrahim. The defendants ought to have had reason to suspect that the impugned passages could be defamatory of the plaintiffs and therefore the clear need to verify with the plaintiffs before publishing the passages. To my mind the defendants were out to sensationalize the so-called marriage of the plaintiffs to sell their *Bacaria*. They must therefore pay. I therefore award each of the plaintiffs a further sum of RM25,000 against each of the defendants.

I do not think that this is a case for exemplary damages. Whilst there is the element of gain in the form of profits by the sale of *Bacaria*, the plaintiffs have failed to show that there was such extensive profit as to warrant an

A award under this head. The plaintiffs did not submit for an apology nor for an injunction to restrain further publication. There will be interest on the awards at 4% pa from the date of publication to date of judgment with costs to be taxed.

Order accordingly.

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Reported by Jafisah Jaafar

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